

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, requiring acceptance of stipulations and rejecting in part noncompetitive oil and gas lease offers W-74482 and W-74387.

Affirmed in part, set aside and remanded in part.

1. Bureau of Reclamation: Generally -- Mineral Leasing Act for Acquired Lands: Consent of Agency -- Oil and Gas Leases: Stipulations

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-59 (1976 and Supp. V 1981), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a bureau within the Department of the Interior, such as the Bureau of Reclamation, the consent of the Secretary of the Interior or his proper delegate is necessary under the Act for leasing of the land.

2. Bureau of Reclamation: Generally -- Mineral Leasing Act for Acquired Lands: Consent of Agency-Oil and Gas Leases: Stipulations

Where the Bureau of Land Management, based on the recommendation of the Bureau of Reclamation, requires the execution of a special stipulation prohibiting all drilling operations on any of the lands described in the lease as a condition to issuance of an oil and gas lease, the record must reflect that such stipulation is supported by valid reasons weighed with due regard for the public interest, including evidence that less stringent alternatives would not adequately accomplish the intended purpose.

APPEARANCES: Gary D. Askins, pro se.

## OPINION BY ADMINISTRATIVE JUDGE GRANT

Gary D. Askins has appealed from decisions of the Wyoming State Office, Bureau of Land Management (BLM), dated September 16, and October 20, 1982, requiring execution of special stipulations including no surface occupancy stipulations as a condition of lease issuance in response to his noncompetitive over-the-counter oil and gas lease offers W-74482 and W-74387. The lands described in the lease offers are acquired lands administered by the Bureau of Reclamation as part of the Cedar Bluff Reservoir project in Kansas.

The decisions of BLM also rejected the lease offers in part as to certain lands because of lack of title in the United States, proximity to structures which would be threatened by oil and gas operations, and the requirement that lands formerly leased be released only through the simultaneous filing procedure. Appellant has not contested these aspects of the BLM decisions. Further, appellant has executed and returned all required stipulations except the no surface occupancy stipulation at issue here. Thus, the only issue before the Board is the propriety of the no surface occupancy stipulation.

The case records disclose no basis for the determination that a stipulation precluding surface occupancy is required. It appears from the record that Bureau of Reclamation consented to leasing on the condition that this stipulation be required without giving reasons therefor.

Appellant contends in his statement of reasons for appeal that environmental concerns are adequately protected by the standard lease terms and the stipulations which he has already signed. He asserts that leases previously issued in the area did not preclude surface occupancy. Further, he alleges that the stipulation hinders efforts to explore and exploit the oil and gas potential of the land. Appellant notes that the 10-acre unit spacing requirements of state law do not facilitate development of the acreage by pooling with adjacent leases.

[1] The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-59 (1976 and Supp. V 1981), requires that the consent of the head of the administrative agency or Department having jurisdiction over the acquired land described in the lease offer be obtained prior to issuance of an oil and gas lease for such land. Robert G. Lynn, 72 IBLA 355 (1983). Further, leasing is subject to such conditions as the head of the Department may prescribe to insure adequate utilization of the lands for the primary purpose for which they have been acquired or for which they are being administered. 30 U.S.C. § 352 (Supp. V 1981). Where the acquired lands are under the jurisdiction of a bureau within the Department of the Interior, such as the Bureau of Reclamation, the consent of the Secretary of Interior is required under the statute for leasing. Mardam Exploration, Inc., 52 IBLA 296 (1981).

[2] The Secretary of the Interior has the authority to require execution of special stipulations to protect environmental and other land use values when deciding to issue a lease. James M. Chudnow, 69 IBLA 16 (1982); Robert P. Kunkel, 41 IBLA 77 (1979). However, the record must disclose a rational basis for the stipulation and that imposition of the stipulation is

weighed with due regard for the public interest. James M. Chudnow, supra; Mardam Exploration, Inc., supra. The Board noted in Mardam, supra, that in the case of a stipulation which prohibits surface occupancy the record should demonstrate that the values to be protected are of sufficient importance to warrant such a prohibition and that less stringent alternatives would not adequately accomplish the intended purpose. 52 IBLA at 298. In view of the lack of any substantiation of the need for such a stipulation in the case record, the cases will be remanded for reconsideration of the need for such a stipulation and preparation of a reasoned decision supported by the record.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as to the partial rejection of appellant's lease offers and imposition of stipulations other than the no surface occupancy stipulation and decision is set aside and the case is remanded as to the requirement of a no surface occupancy stipulation.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

R. W. Mullen  
Administrative Judge